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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-186008

DATE: May 22, 1978

MATTER OF: William T. Schaefer and Hillard N.
Vance - Salary Retention

- DIGEST:
1. Employee requested change to lower grade position which was subject of extensive recruitment effort that failed to fill all vacant positions. Employee is entitled to salary retention under 5 U.S.C. § 5337 (1976) since demotion was attributable to agency's special recruitment need and demotion is not considered to be at employee's own request.
 2. Wage board employee requested change to lower grade position in order to move from "dead end" job. Employee does not appear to be eligible for salary retention under applicable Civil Service Commission regulations since record does not indicate that demotion was result of a special recruitment need or was part of employee development program.

This action is in response to the request dated April 12, 1977, from the Defense Mapping Agency, Topographic Center (Center), reference DMATC-PO (20100), for an advance decision concerning the entitlement of two employees of the Center, Messrs. William T. Schaefer and Hillard N. Vance, to salary retention. Our consideration of this request was delayed while the Civil Service Commission (CSC) reviewed its position on salary retention as reflected in our decision in Faye Abu-Ghazaleh, 56 Comp. Gen. 199 (1976).

The report from the Center indicates that Mr. Schaefer requested a change to lower grade from the position of Cartographer, grade GS-11, step 8, to Position Classification Specialist, grade GS-7, step 10, effective May 19, 1974. The Center had previously undertaken an extensive recruitment effort which had failed to produce sufficient candidates for the vacant Position Classification Specialist positions, and, with Civil Service Commission approval, the Center selected Mr. Schaefer for this position without competition.

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The report from the Center indicates further that although this new position was no longer a part of the Department of the Army Career Program which requires intensified training and rotational assignments for all participants, Mr. Schaefer did receive intensified training which is typical of a formal Career Development Program.

The report from the Center states that Mr. Vance also requested a change to lower grade from the position of Journeyman Bindery and Finish Worker, grade WP-14, to Negative Engraver, grade WP-13, and that this action increased his future promotion potential to a Journeyman Negative Engraver, grade WP-23. This action was effective October 22, 1972. The report states further that Mr. Vance received intensified training in his new position and that while the Center did not have a formalized Upward Mobility Program at the time Mr. Vance changed to a lower grade position, the fact that he increased his promotion potential substantially and thus became more valuable to the Center paralleled the Center's concept of its current formalized Upward Mobility Program.

Under the provisions of 5 U.S.C. § 5337 (1976), an employee such as Mr. Schaefer who is reduced in grade from a grade of the General Schedule, may, under certain conditions, retain his previous rate of pay for 2 years, if the reduction was not at his own request. See also 5 C.F.R. Part 531, Subpart E (1977) and Federal Personnel Manual (FPM) Supplement 990-2, Book 531, Subchapter S5-4d(2)(b)(iv). The Civil Service Commission, pursuant to its authority to issue regulations supplementing 5 U.S.C. § 5337, has determined that certain actions are not considered to be at the employee's request even though the employee may have initiated the action. The CSC views, as set forth in our decision in Faye Abu-Ghazaleh, supra, are as follows:

"When a demotion is initiated by the agency for the primary benefit of the agency, it is not taken at the employee's request, even though the employee may have applied through merit promotion procedures or the employee may have requested the agency to consider his personal situation. On the other hand, if the demotion is initiated by the employee for his personal

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advantage (e.g. dissatisfaction with present employment, unable to perform duties, or health), salary retention is inappropriate. However, it cannot be assumed, simply because management initiates recruitment by advertising a vacancy, that it has initiated the demotion of an employee, and therefore that that action automatically entitles an employee to salary retention. To make such an assumption would effectively negate the statutory proviso 'at his request' by filling all positions through established vacancy announcement machinery. On the other hand, it cannot be assumed that because an employee applies for consideration for a vacant position that the action is taken at the employee's request, that it falls within the exclusion criteria of the law, and that the employee is automatically ineligible for salary retention. In order to deny salary retention, it must be established that the agency does not have a special recruitment need, and that this is not in fact the paramount factor leading to the downgrading.

"In FPM Supplement 990-2, Book 531, the Commission has provided examples of the kinds of actions which are not considered to be initiated by the employee even though the employee may have requested consideration for the position involved. Included in these examples is 'A demotion or reassignment of an employee as part of an employee development program in order to provide to his further development.' Employee development programs encompass the formal training programs, in connection with which the agencies usually have written career plans, training agreements, and so-called 'career promotions' without further recourse to merit promotion vacancy announcements. Upward Mobility Programs, Apprentice Training Programs, and Intern Programs are some of the more common development programs. They are programs which

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are initiated by the agency primarily to benefit the agency, in that they offer training and experience which aid in the development of the workforce or otherwise meet the agency's need to develop a reservoir of trained persons with skills and knowledges essential to the agency's mission."

With regard to Mr. Schaefer's demotion, it appears that the Center had a special recruitment need which was a paramount factor leading to Mr. Schaefer's downgrading. On the basis of the record before us and our decision in Faye Abu-Ghazaleh, supra, we conclude that the denial of salary retention for Mr. Schaefer was an unjustified or unwarranted personnel action under the provisions of the Back Pay Act, 5 U.S.C. § 5596 (1976), and that Mr. Schaefer is entitled to salary retention for the period from May 19, 1974, to January 25, 1976, when he was promoted, if he otherwise met the conditions set forth in 5 U.S.C. § 5337.

Mr. Vance was reduced in grade between two prevailing wage positions prior to the effective date of statutory provisions regarding retained pay for employees under the Federal Wage System contained in 5 U.S.C. § 5345 (1976). See 5 U.S.C. § 5341 note (1976). Therefore, Mr. Vance's entitlement to salary retention would be governed under the provisions of FPM Supp. 532-1, Subchapter 9 (Inst. 6, 9/17/71). The eligibility requirements for salary retention for prevailing rate employees closely parallel the requirements for General Schedule employees, and we presume that the CSC's guidance concerning demotions at the employee's request which is set forth above would be similarly applicable to prevailing rate employees.

With regard to Mr. Vance's demotion, there is no evidence in the record before us that the Center had a special recruitment need which was a paramount factor. In addition, Mr. Vance's demotion does not appear to have been part of an employee development program such as existed in our decision in Faye Abu-Ghazaleh, supra. The record before us indicates that Mr. Vance accepted the change to lower grade position in order to move from a position with a "dead end" status or promotion potential. Therefore, we do not believe

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that Mr. Vance is entitled to salary retention under the applicable Civil Service Commission regulations, and we conclude that the denial of salary retention to Mr. Vance was not an unjustified or unwarranted personnel action under 5 U.S.C. § 5596.

Accordingly, action may be taken consistent with the discussion above.


Acting Comptroller General
of the United States